

MELODY ANN WRIGHT AND
KARLEEN McKENZIE, GUARDIAN AD LITEM
v.
ACTING AREA DIRECTOR, PORTLAND AREA OFFICE,
BUREAU OF INDIAN AFFAIRS

IBIA 81-23-A

Decided January 7, 1982

Appeal from a decision of the Acting Area Director, Portland Area Office, determining the distribution of decedent's share of judgment funds awarded to the Klamath Tribe.

Affirmed.

1. Indian Probate: Klamath Tribe--Indian Tribes: Judgment Funds

Under 25 U.S.C. § 565a (1976) the share of judgment funds due to a deceased enrollee of the Klamath Tribe passes by operation of Federal law to the decedent's heir or heirs as determined by the Secretary.

APPEARANCES: Richard B. Thierolf, Jr., Esq., for appellants Melody Ann Wright and Karleen McKenzie; Philip Studenberg, Esq., for appellants James Joseph Wright and Eshoni Wright (Segoviano); William L. Sisemore, Esq., for appellee Phyllis Frances Cole. Counsel to the Board: Kathryn A. Lynn.

OPINION BY CHIEF ADMINISTRATIVE JUDGE HORTON

This appeal was filed on behalf of Melody Ann Wright, a minor, by her mother and guardian ad litem, Karleen McKenzie, from a February 9, 1981, decision of the Acting Area Director, Portland Area Office, Bureau of Indian Affairs (BIA). That decision held that Phyllis Frances Cole (appellee) was the sole heir under the will of James C. Wright, Jr., deceased Klamath enrollee number 2109, and as such was entitled to receive his share of judgment funds awarded to the Klamath Tribe. Melody Ann Wright, joined by James Joseph Wright and Eshoni Wright (Segoviano) (appellants), state that they are the natural children of

decedent and should take his share of the judgment funds by way of intestate succession.

Background

James C. Wright, Jr., died on November 27, 1974. Because at the time of his death the Klamath Tribe was no longer a Federally recognized tribe, decedent's estate was probated in the Klamath County, Oregon, Circuit Court. By order dated November 2, 1978, the court admitted to probate as decedent's last will and testament a document dated April 23, 1973. In the second paragraph of that will decedent acknowledged four children, the three appellants and Timothy Shane Wright, his son with appellee. Decedent left \$1 to each of these children. The third paragraph of the will stated: "I give, devise and bequeath unto PHYLLIS FRANCES COLE, all of my properties, real, personal and mixed, together with all property of which I may have any power of appointment, absolutely and in fee simple." Although there was apparently evidence presented to the court that decedent may have been intoxicated when he signed this will, ^{1/} the court found that the document was a valid will and ordered distribution in accordance with its provisions.

Following the award to the Klamath Tribe of judgment claims against the United States, the Secretary determined the proper recipients of those funds in accordance with 25 U.S.C. § 565a(b) (1976). On February 9, 1981, the Acting Area Director for the Portland Area Office, after finding that decedent had been entitled to a share of the judgment funds, found that appellee was decedent's sole heir. Therefore he ordered that decedent's share of the judgment funds awarded to the Klamath Tribe should be distributed to appellee.

Appellant Melody Ann Wright appealed this decision on March 23, 1981. The appeal was referred to the Board on April 10, 1981, under the provisions of 25 CFR 2.19(a)(2). By motion dated May 4, 1981, appellants James Joseph Wright and Eshoni Wright (Segoviano) joined in the appeal.

Discussion and Conclusions

Because the Klamath Tribe is no longer a Federally recognized tribe, the Department of the Interior has no general probate jurisdiction over the property of deceased Klamaths. Instead, probate is conducted within the state court systems. Under 25 U.S.C. § 565a(b)

^{1/} The administrative record does not contain a copy of the transcript of the State court hearing, despite evidence that attempts were made in the administrative proceedings below to procure a copy.

(1976), 2/ however, the Secretary is given limited authority to make an independent determination of the rightful heirs of a deceased Klamath enrollee for the purpose of distributing judgment funds. Yvonne Weiser v. Area Director, Portland Area Office, Bureau of Indian Affairs, 9 IBIA 76 (1981); Gertrude E. Sherman v. Acting Area Director, Portland Area Office, Bureau of Indian Affairs, 9 IBIA 25, 88 I.D. 619 (1981). Although a state court heirship determination may be influential in reaching a Departmental decision under section 565a, such a determination is not binding on the Department. Yvonne Weiser, supra at 78 n.1.

In this case the Acting Area Director decided, after considering all of the evidence presented to him and in the exercise of his own independent judgment, that he agreed with the State court decision finding appellee to be decedent's legal heir. Although it appears that contradictory evidence had been presented during the State court proceeding as to whether or not decedent was intoxicated and perhaps under undue influence at the time he signed the will in question, appellants presented no new evidence on this vital issue to the Acting Area Director. The Acting Area Director was entitled to give considerable weight to the opinion of the State court judge who heard the testimony and observed the witnesses in the original probate hearing. While the question is not free from doubt, there is no factual basis for reversing the Acting Area Director's decision.

[1] Once the Acting Area Director determined decedent's legal heir, section 565a required distribution of decedent's share of the judgment funds to that person. Both parties apparently misinterpreted this decision as being controlled by the State court determination of heirs and the application of State laws governing wills and personal property. Thus, appellants argued that decedent's share of the judgment funds could not pass under his will because a residuary clause cannot operate to pass property acquired after the testator's death. In support of this argument, they alleged that, at the time of his death, decedent's interest in the outcome of the Klamath Tribe's lawsuit against the United States was no more than a cause of action with no vested right to any possible revenue generated by that suit. Therefore they urged that because his share of the judgment funds was not covered by the will, it must be distributed to them under the Oregon intestate succession statute. Appellee argued that decedent had an actual interest in the judgment funds when he died and that his share could pass under the residuary clause. These arguments are not dispositive. The Acting Area Director looked to the will as one source

2/ 25 U.S.C. § 565a(b) (1976) states in pertinent part that "a share [of the judgment funds] payable to a deceased enrollee shall be paid to his heirs or legatees upon the filing of proof of death and inheritance satisfactory to the Secretary of the Interior, whose findings and determinations upon such proof shall be final and conclusive."

for determining decedent's heirs. Once he had determined those heirs, however, decedent's share of the judgment funds passed by operation of Federal law, not by the provisions of the will.

Pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the February 9, 1981, decision of the Acting Area Director, Portland Area Office, is affirmed.

This decision is final for the Department.

Wm. Philip Horton
Chief Administrative Judge

We concur:

Franklin D. Arness
Administrative Judge

Jerry Muskrat
Administrative Judge